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No. 81-12

In the Supreme Court of the United States

October Term, 1981

HOBERT W. FISCHER,
Petitioner,

vs.

ROBERT A. DAKOPOLOS,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF MISSOURI

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QUESTIONS PRESENTED FOR REVIEW

The petitioner has failed to present any questions which this court may review by writ of certiorari. The petitioner, in a less than articulate and conclusory fashion, asserts certain factual matters, many of which are expressly denied by respondent, and he has failed to present any question which this court may review by writ of certiorari. The petition filed herein fails to disclose any ground upon which a writ of certiorari should be issued and because the decision of the state court below rests on grounds of state procedure, no federal question has been presented for this court's review.

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JURISDICTION

This court does not have jurisdiction to review this cause pursuant to 28 U.S.C. §§ 1254-1254(i) in that the judgment sought to be reviewed was entered and reviewed by the courts of the State of Missouri and not the court of appeals for any federal court. The Court is without jurisdiction to review this cause pursuant to 28 U.S.C. § 1257 in that the validity of a treaty or statute of the United States is not in question; the validity of state statute has not been drawn into question; and no title, right, privilege or immunity is specially set up or claimed under the constitution, treaties, or statutes of the United States.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment 14.

Equal Rights Amendment 5.

STATEMENT OF CASE

Petitioner filed a petition for malpractice against respondent in the Circuit Court of Jackson County, Missouri. On January 4, 1980 respondent filed a Motion to Dismiss petitioner's petition for failure to state a claim or cause of action under Missouri law for which relief could be granted. On March 10, 1980 the court sustained respondent's motion and thereafter, petitioner sought review in the Missouri Court of Appeals, Western District. In a unanimous decision filed March 2, 1981 which appears at 614 S.W.2d 2 (Mo.App. 1981) the court of appeals affirmed the judgment of the trial court under the laws of the State of Missouri and thereafter, petitioner sought transfer to the Missouri Supreme Court, which was denied by the Court on May 11, 1981.

ARGUMENT

Petitioner seeks to invoke the jurisdiction of this court to review the decisions of courts of the State of Missouri dismissing his cause of action against respondent for failure of petitioner to state a valid cause of action under Missouri law. The decision of the state court below is grounded upon the substantive law of the state and does not present a federal question. The federal Supreme Court has no power to review the state court's judgment on questions of state law. *Henry v. Williams*, 299 F.Supp. 36 (D.C.Miss. 1969). The United States Supreme Court

is bound to accept the interpretation and construction of state law by the highest court of the state. *Hortonville Joint School District No. 1 v. Hortonville Ed. Association,* 426 U.S. 482, 96 S.Ct. 2308 (1976); *Wallach v. City of Pagedale,* 376 F.2d 671 (8th Cir. 1967). This court simply does not re-examine local law as applied by local courts. *Skelly Oil Co. v. Phillips Petroleum Co.,* 336 U.S. 245, 69 S.Ct. 516 (1950).

This court does not have jurisdiction to issue a writ of certiorari under 28 U.S.C. §§ 1254-1254(i) as they relate to this court's power of review over inferior federal courts. As shown by the appendices attached to the petition herein, this cause was heard and determined in the courts of the State of Missouri, not a federal court; therefore, this court is without jurisdiction to issue a writ of certiorari pursuant to 28 U.S.C. § 1254.

The jurisdiction of this court to review judgments of state courts by writ of certiorari is discretionary and should not be invoked unless properly reviewable questions of sufficient gravity are clearly shown. *Brown v. Allen,* 344 U.S. 443, 73 S.Ct. 397 (1953); Rule 19 Supreme Court Rules. The petitioner has failed to present any substantial federal question for this court's review.

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This is to certify that a copy of the foregoing was mailed to Hobert W. Fischer, pro se, 510 East 29th Avenue, North Kansas City, Missouri 64116 this 27th day of July, 1981.